IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3093 OF 2005
IN
CUSTOMS APPEAL (L) NO.38 OF 2005

The Commissioner of Central Excise
& Customs, Nashik .. Appellant.

V/s.

M/s.Goel Packaging Industries
Limited & Others .. Respondents.

Mr.S.M. Shah with Mrs.S.V. Bharucha i/b. Dr.T.C. Kaushik for the appellant.

Mr.M.R. Baya for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 19TH APRIL, 2006.

P.C. :

By this notice of motion, the appellant prays for condonation of delay in filing the appeal against the order dated 23rd December, 2004 passed by the Customs, Excise & Service Tax Appellate Tribunal. The delay is of seven days. In the affidavit in support of the notice of motion, it is stated that due to heavy rains, floods, unforeseen disaster, deluge in Mumbai and various parts of Maharashtra on 26th July, 2005 and 27th July, 2005, the delay occurred. It is stated that the appeal was duly notarised on 27th July, 2005 before the Notary Public at Nashik but the same could be filed only on 10th

August, 2005.

2. The counsel for the respondent in opposition to the notice of motion would submit that the appeal itself is not maintainable under Section 130 of the Customs Act, 1960 since it arises out of an order relating to value of goods for purposes of assessment. According to the counsel for the respondent when the appeal itself is not maintainable, no purpose will be served in consideration of the notice of motion for condonation of delay.

3. Since the point of maintainability was raised by the counsel for the respondent, we perused the judgment of the Tribunal dated 23rd December, 2004 and considered Section 130 of the Customs Act. The impugned order relates to the liability of confiscation under Section 113(1)(c) and imposition of penalty under Section 114 of the Customs Act, 1962 and, therefore, we are not impressed by the submission of the counsel for the respondent that the appeal arises out of an order relating to the value of goods for purposes of assessment.

4. As it is, this argument of maintainability of appeal is misplaced and misconceived for

consideration of an application for condonation of delay. What is relevant to be seen for consideration of an application for condonation of delay is as to whether sufficient cause has been made out justifying condonation of delay. The appeal suffers from short delay of seven days. It is apparent from the perusal of the appeal that it was notarised on 27th July, 2005 at Nashik within limitation. That shows that the appellant was vigilant in filing the appeal. Thus, for the reasons stated in the affidavit in support of the notice of motion, we are satisfied that the appellant was prevented by sufficient cause in filing the appeal in time.

5. We, accordingly, condone the delay in filing the appeal. The notice of motion stands disposed of.

6. The office is directed to post the appeal for admission on 24th April, 2006.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)